

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p>Leonard M. Shulman - Bar No. 126349 Melissa Davis Lowe - Bar No. 245521 SHULMAN BASTIAN FRIEDMAN & BUI LLP 100 Spectrum Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400 Facsimile: (949) 340-3000 Email: LShulman@shulmanbastian.com MLowe@shulmanbastian.com</p> <p><input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Jeffrey I. Golden, Chapter 7 Trustee</p>		<p>FOR COURT USE ONLY</p>	
<p>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION</p>			
<p>In re:</p> <p>LINDA NGUYEN,</p> <p>Debtors.</p>		<p>CASE NO.: 8:21-bk-10534-TA</p> <p>CHAPTER: 7</p> <p>NOTICE OF SALE OF ESTATE PROPERTY</p>	

Sale Date: 01/04/2022	Time: 11:00 am
Location: U.S. Bankruptcy Court, 411 W. Fourth Street, Ctrm. 5B, Santa Ana, CA 92701	

Type of Sale: ☒ Public ☐ Private **Last date to file objections:** 12/21/2021

Description of property to be sold:

Pending claim in the Circuit Court for the Fourth Judicial Circuit in and for Nassau County, Florida, Case No. 19CA000387AXYX ("Litigation") as described in the attached Motion.

Terms and conditions of sale:

See Attached Notice of Motion, Motion and Bidding Procedures set forth in the Motion.

Proposed sale price: \$15,000.00, subject to overbids

Overbid procedure (if any): Initial overbid amount of \$17,000.00, minimum bid increments thereafter shall be \$1,000.00

Overbids must be in writing and received by the Trustee and his counsel on or before December 31, 2021 and accompanied by a deposit of the overbid amount in certified funds made payable to the Trustee. See Bidding Procedures in Motion for further instructions.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Hearing Date/Time: 01/04/2022 at 11:00 a.m.

Location: U.S. Bankruptcy Court
411 W. Fourth Street, Ctrm. 5B
Santa Ana, CA 92701

Contact person for potential bidders (include name, address, telephone, fax and/or email address):

Melissa Davis Lowe, Esq.
Shulman Bastian Friedman & Bui LLP
100 Spectrum Center Drive, Suite 100
Irvine, CA 92618
Telephone: (949) 340-3400
Email: MLowe@shulmanbastian.com

Date: 12/10/2021

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address</p> <p>Leonard M. Shulman - Bar No. 126349 Melissa Davis Lowe - Bar No. 245521 SHULMAN BASTIAN FRIEDMAN & BUI LLP 100 Spectrum Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400 Facsimile: (949) 340-3000 Email: LShulman@shulmanbastian.com MLowe@shulmanbastian.com</p> <p><input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Jeffrey I. Golden, Chapter 7 Trustee</p>	<p>FOR COURT USE ONLY</p>
<p align="center">UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION</p>	
<p>In re:</p> <p>LINDA NGUYEN,</p> <p align="center">Debtors.</p> <p align="right">Debtor(s).</p>	<p>CASE NO.: 8:21-bk-10534-TA CHAPTER: 7</p> <p>NOTICE OF MOTION FOR: CHAPTER 7 TRUSTEE'S MOTION FOR ORDER APPROVING SETTLEMENT AND COMPROMISE OF DISPUTES BY AND AMONG CHAPTER 7 TRUSTEE, ROCKWELL AT AMELIA PASSAGE, LLC AND TRI M. VO PURSUANT TO FEDERAL RULES OF BANKRUPTCY PROCEDURE 9019; OR IN THE ALTERNATIVE, FOR SALE OF THE ESTATE'S INTEREST IN PENDING LITIGATION FREE AND CLEAR OF LIENS AND SUBJECT TO OVERBIDS</p> <p>(Specify name of Motion)</p> <p>DATE: 01/04/2022 TIME: 11:00 am COURTROOM: 5B PLACE: United States Bankruptcy Court 411 W. Fourth Street Santa Ana, CA 92701</p>

1. TO (specify name): Honorable Theodor C. Albert, U.S. Bankruptcy Judge, the Office of the United States Trustee,
the Debtor and Her Counsel and All Interested Parties
2. NOTICE IS HEREBY GIVEN that on the following date and time and in the indicated courtroom, Movant in the above-captioned matter will move this court for an Order granting the relief sought as set forth in the Motion and accompanying supporting documents served and filed herewith. Said Motion is based upon the grounds set forth in the attached Motion and accompanying documents.
3. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

4. **Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to LBR 9013-1. If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
5. **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according to the judge's self-calendaring procedures.

Date: 12/10/2021

Shulman Bastian Friedman & Bui LLP
Printed name of law firm

/s/ Melissa Davis Lowe
Signature

Melissa Davis Lowe
Printed name of attorney

1 Leonard M. Shulman - Bar No. 126349
Melissa Davis Lowe - Bar No. 245521
2 **SHULMAN BASTIAN FRIEDMAN & BUI LLP**
100 Spectrum Center Drive, Suite 600
3 Irvine, California 92618
Telephone: (949) 340-3400
4 Facsimile: (949) 340-3000
Email: LShulman@shulmanbastian.com
5 MLowe@shulmanbastian.com

6 Attorneys for Jeffrey I. Golden,
Chapter 7 Trustee
7

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**
10

11 In re

12 **LINDA NGUYEN,**

13 Debtor.
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Case No. 8:21-bk-10534-TA

Chapter 7

**CHAPTER 7 TRUSTEE'S MOTION FOR
ORDER APPROVING SETTLEMENT
AND COMPROMISE OF DISPUTES BY
AND AMONG CHAPTER 7 TRUSTEE,
ROCKWELL AT AMELIA PASSAGE,
LLC AND TRI M. VO PURSUANT TO
FEDERAL RULES OF BANKRUPTCY
PROCEDURE 9019; OR IN THE
ALTERNATIVE, FOR SALE OF THE
ESTATE'S INTEREST IN PENDING
LITIGATION FREE AND CLEAR OF
LIENS AND SUBJECT TO OVERBIDS;
MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION OF
JEFFREY I. GOLDEN IN SUPPORT
THEREOF**

Hearing

Date: January 4, 2022

Time: 11:00 a.m.

Place: Courtroom 5B

United States Bankruptcy Court
411 W. Fourth Street
Santa Ana, CA 92701

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1 **TO THE HONORABLE THEODOR C. ALBERT, UNITED STATES**
2 **BANKRUPTCY JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, THE**
3 **DEBTOR AND HER COUNSEL, AND ALL INTERESTED PARTIES:**

4 **I. SUMMARY OF ARGUMENT**

5 Jeffrey Golden the duly appointed Chapter 7 trustee (“Trustee”) for the bankruptcy estate
6 (“Estate”) of Linda Nguyen (“Debtor”) brings this Motion for an Order Approving Settlement and
7 Compromise of Disputes By and Among Chapter 7 Trustee, Rockwell at Amelia Passage, LLC and
8 Tri M. Vo, Or in the Alternative, for Sale of the Estate’s Interest in Pending Litigation Free and
9 Clear of Liens and Subject to Overbids (“Motion”). The Motion seeks to approve the proposed
10 settlement agreement and compromise of disputes with Rockwell at Amelia Passage, LLC
11 (“Rockwell”) and Tri M. Vo (collectively, “Defendants”) subject to overbids in the event any party
12 desires to purchase the Estate’s interest in the Litigation (defined below) for a sum greater than the
13 settlement amount. A true and correct copy of the proposed Settlement Agreement and Mutual
14 Release (“Agreement”) is attached as **Exhibit 1** to the annexed Declaration of Jeffrey Golden
15 (“Golden Declaration”).

16 Under the settlement, the Trustee will receive payment of \$15,000.00 and the parties will
17 exchange mutual general releases relating to pending state court litigation in Florida. As set forth
18 below, the Trustee believes that the interests of creditors of the Estate would best be served if the
19 Court approves the proposed settlement under the four factors dictated by *A & C Properties*, 784
20 F.2d 1377 (9th Cir. 1986). Along with the liquidation of other assets in the case, the Trustee expects
21 that the settlement amount will allow him to make a meaningful distribution to unsecured creditors.

22 In order to ensure the Trustee is liquidating the Estate’s interest in the Litigation for the
23 highest possible value, the proposed settlement is conditioned upon there being no buyer that will
24 pay more than the settlement amount to purchase the Estate’s interest in the Litigation. As such, in
25 the alternative, the Motion seeks approval to sell the Litigation subject to overbids and free and clear
26 of liens.

27 If the proposed settlement is not approved, subject to any overbids received, the Trustee will
28 lose the opportunity to settle the disputes and receive the \$15,000.00 settlement payment. Also,

1 there is a significant benefit to settling before the state court litigation pending in Florida goes to
2 trial by jury. The Trustee believes that the expense of litigation when compared to the potential
3 recovery could possibly even be detrimental to the Estate. More importantly, there is no guarantee
4 that the Trustee would prevail at trial.

5 For all these reasons which will be discussed in greater detail below, the Trustee asks the
6 Court to grant this Motion.

7 **II. BACKGROUND INFORMATION**

8 **A. Case Commencement**

9 The Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code on March 2,
10 2021.

11 Jeffrey Golden is the duly appointed, qualified and acting Chapter 7 trustee for the Estate.

12 **B. Claims Filed in the Case**

13 The Debtor scheduled unsecured claims totaling over \$395,000. The claims bar date in this
14 case does not run until December 21, 2021. To date, unsecured claims have been filed totaling
15 \$31,573.19.

16 **C. The Litigation at Issue**

17 In her Schedules A/B, the Debtor listed as an asset of the Estate a pending claim in the Circuit
18 Court for the Fourth Judicial Circuit in and for Nassau County, Florida, Case No.
19 19CA000387AXYX (the "Litigation"). The Debtor listed the value of the Litigation as "Unknown."

20 The Trustee has learned that in the Litigation, the Debtor alleges claims related to an 11-acre
21 property (the "Property"), as well as claims related to a real estate development project managed
22 and being developed by the Defendants in Nassau County, Florida (the "Project") adjacent to the
23 Property. Specifically, the Debtor alleges that during one of her business exchanges with the
24 Defendants, the Defendants had the Debtor sign an extension addendum, but instead of using the
25 signature page for the extension addendum, the Defendants allegedly took the signature page and
26 attached it to an amendment to a purchase and sale agreement, which assigned all of the Debtor's
27 rights to purchase the Property to the Defendants.

28 ///

1 On November 26, 2019, the Defendants filed a Motion to Dismiss the Complaint, disputing
2 the Debtor's claims in the Litigation, including all claims related to the Property and the Project,
3 and alleging that the Debtor's Complaint fails to state a cause of action against the Defendants.

4 On April 28, 2020, a mediation conference was held between the Debtor and the Defendants
5 which resulted in the parties reaching an impasse on all issues.

6 On October 11, 2021, the Defendants filed a Motion for Final Summary Judgment, disputing
7 the Debtor's claims in the Litigation, including all claims related to the Property and the Project,
8 and alleging that the Debtor's Complaint fails to state a cause of action against the Defendants.

9 The Litigation remains pending and has not been scheduled for trial.

10 **D. The Settlement**

11 Subject to Court approval, the Trustee and Defendants reached the Agreement to resolve
12 their disputes related to the Litigation. Attached as Exhibit 1 to the Golden Declaration is a true and
13 correct copy of the proposed Agreement. The principal terms of the settlement are:

- 14 • Within seven (7) business days of the complete execution of the Agreement, the
15 Trustee shall file a Motion for Approval of Settlement seeking an order from the
16 Bankruptcy Court approving the Agreement.
- 17 • Within fourteen (14) days of the Effective Date of the Agreement, the Defendants
18 shall pay the Trustee the sum of \$15,000.00.
- 19 • Within fourteen (14) days after receipt of the settlement sum, the Trustee, on
20 behalf of the Debtor, shall execute a Joint Stipulation of Dismissal with Prejudice
21 of the Litigation, which the Trustee agrees the Defendants will cause to be
22 executed on their behalf and thereafter filed with the Court in the Litigation in
23 order to obtain dismissal of the Litigation with prejudice, and with the parties to
24 bear their own attorney's fees and costs. The parties will in good faith exercise
25 all reasonable efforts required to obtain the dismissal of the Litigation with
26 prejudice, including executing and delivering any motions, declarations or other
27 items of support reasonably required in connection therewith.
- 28 • The Defendants agree to waive any and all claims they may have in the
Bankruptcy Case such that they will not receive any distribution in the
Bankruptcy Case.
- The settlement is subject to Bankruptcy Court approval and is conditioned upon
there being no buyer willing to pay more than the settlement amount for the
Estate's interest in the Litigation.

Given that the settlement of the Litigation is subject to overbids, it is anticipated that the Trustee will receive the best and highest value for the Litigation and therefore the proposed settlement amount is fair and reasonable.

E. Notice of Bidding Procedures

While the Trustee is prepared to consummate the settlement of the Litigation on the terms set forth above and in the Agreement, in the event a party other than Defendants or Debtor (each, a “Competing Bidder”) wishes to purchase the Litigation, the Trustee requests that the Court approve the following overbid procedures (collectively, “Bidding Procedures”):

1. each Competing Bidder who wants to participate in the overbid process must notify the Trustee of their intention to do so in accordance with the Notice on or before three (3) business days before the hearing on the Motion (the “Response Deadline”);
2. the first overbid for the Remnant Assets by a Competing Bidder must be at least \$2,000 more than the Purchase Price, or a total of \$17,000;
3. each Competing Bidder must submit a Cashier’s Check to the Trustee in the amount of such Competing Bidder’s first overbid at the time such overbid is made;
4. each subsequent overbid for the Litigation must be in additional increments of \$1,000, unless otherwise agreed by the parties or directed by the Court;
5. the bidder must purchase the Litigation under the same terms and conditions set forth in the Purchase Agreement, other than the purchase price; and
6. in the event of an overbid that meets the foregoing conditions, the Trustee will schedule an auction of the Litigation in advance of the hearing date and will request that the Court approve the winning bidder at the auction as the purchaser at the hearing on the Motion.

The Bidding Procedures will be provided to all creditors and any potential bidders or parties who have shown an interest in the Litigation. In addition, the Court’s mandatory form Notice of Sale of Estate Property will be filed with the Court so that notice of the sale of the Litigation may be posted on the Court’s website under the link “Current Notices of Sales,” thereby giving notice to any potential interested parties.

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1 Based on the foregoing, the Trustee believes that under the circumstances of this case, the
2 Litigation will have been appropriately marketed for bidding.

3 **III. ARGUMENT**

4 **A. Entry of an Order Approving the Settlement is Proper**

5 The power of the Court to review and approve settlements is expressly recognized in Federal
6 Rule of Bankruptcy Procedure 9019(a), which provides:

7 On motion by the trustee and after notice and a hearing, the court may
8 approve a compromise or settlement. Notice shall be given to
9 creditors, the United States trustee, the debtor, and indenture trustees
as provided in Rule 2002 and to any other entity as the court may
direct.

10 Thus, upon notice to a debtor's creditors, the United States Trustee, debtors, and indenture
11 trustees, settlement of a claim of the estate is appropriate. The approval of a compromise is a core
12 proceeding under 28 U.S.C. § 157(b)(2)(A) and (O). *In re Carla Leather, Inc.*, 50 B.R. 764, 775
13 (S.D.N.Y. 1985).

14 **B. The Court May Approve a Settlement and Compromise Which is Fair and Equitable**

15 The purpose of a compromise agreement between a debtor and a creditor is to allow the
16 parties to avoid the expenses and burdens associated with litigation. *Martin v. Kane (In re A & C*
17 *Properties)*, 784 F.2d 1377, 1380-81 (9th Cir. 1986), *cert. denied sub nom, Martin v. Robinson*, 479
18 U.S. 854 (1986). The bankruptcy court has great latitude in approving compromise agreements as
19 long as it finds that the compromise is fair and equitable. *Id.* at 1382; *see also, Woodson v.*
20 *Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). Generally, the
21 benchmark in determining the propriety of a settlement is whether the settlement is in the best
22 interests of the estate and its creditors. *In re Energy Cooperative, Inc.*, 886 F.2d 921, 927 (7th Cir.
23 1989). To be approved, the settlement need not represent the highest possible return to the estate,
24 but merely must fall within the "range of reasonableness." *In re Walsh Construction, Inc.*, 669 F.2d
25 1325, 1328 (9th Cir. 1992). In making this determination, the bankruptcy court need not conduct a
26 trial or even a "mini trial" on the merits. *Id.*

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1 In determining the fairness, reasonableness and adequacy of a proposed settlement
2 agreement, the Court must consider the following factors:

3 (a) The probability of success in the litigation; (b) the difficulties, if any, to be
4 encountered in the matter of collection; (c) the complexity of the litigation involved,
5 and the expense, inconvenience, and delay necessarily attending it; (d) the paramount
6 interests of the creditors and a proper deference to their reasonable views in the
7 premises.

8 *A & C Properties*, 784 F.2d at 1381; *Woodson*, 839 F.2d at 620. In other words, the Court
9 must weigh certain factors in order to determine whether the compromise is in the best interests of
10 the bankruptcy estate. *A & C Properties*, 784 F.2d at 1382.

11 1. The Probability of Success in Litigation

12 In the Litigation, the Debtor alleges claims related to the Property, as well as claims related
13 to a real estate development project managed and being developed by the Defendants in Nassau
14 County, Florida on the land adjoining to the Property. Specifically, the Debtor alleges that during
15 one of her business exchanges with the Defendants, the Defendants had the Debtor sign an extension
16 addendum, but instead of using the signature page for the extension addendum, the Defendants
17 allegedly took the signature page and attached it to an amendment to a purchase and sale agreement,
18 which assigned all of the Debtor's rights to purchase the Property to the Defendants.

19 The Defendants deny and dispute the Debtor's claims in the Litigation and the Defendants
20 recently filed a Motion for Final Summary Judgment for failure to state a cause of action.

21 The Trustee understands that the adjoining parcel to the Property was not acquired by
22 Defendants and as such, the Project was not completed. Thus, the only asset at issue is the Property.
23 The Property apparently is marsh land and not all that valuable. As such, even if the Trustee were
24 to prevail in the Litigation, he believes the value of the judgment would not be very substantial. As
25 such, this factor weights in favor of settling.

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2. Difficulties in Collection

As to the second factor, the Trustee believes collection against the Defendants would be difficult. Although the Defendants may have some assets that could be used to satisfy a judgment, if the Defendants fought the collection of any judgment, such actions would only increase the cost to the Estate, thereby reducing payments to be made to creditors. As such, this factor weighs in favor of settlement.

3. The Complexity, Expense, Inconvenience and Delay of Litigation

The Trustee has been able to settle with the Defendants before having to meaningfully engage in the Litigation, before having to engage special litigation counsel, and before having to attend trial. If the Trustee continued to litigate the disputes with the Defendants, the Trustee would incur a significant amount of time and money, including attending trial and possibly responding to appeals.

The issues involved are factually complex because the Defendants and the Debtor have made conflicting allegations that would require substantial time and money to resolve. Rather than delay this matter and incur expenses or resources litigating, the Trustee determined that the settlement reached is fair and reasonable.

Based thereon, the Trustee believes the proposed settlement is the most expedient and cost effective method for resolving the issues with the Defendants and collecting money for the Estate. This factor weighs in favor of settling.

4. The Interests of Creditors

Finally, the advantageous settlement avoids the risk and cost of litigation and allows the Trustee to preserve resources by reducing litigation costs and at the same time enhancing the value of the Estate by generating funds from which the Estate's creditors may be paid. Due to the risks and costs of litigation, the amount under the settlement is likely greater than the Trustee could realize if he were successful in litigating the disputes with the Defendants.

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1 As discussed above, the Trustee believes the expenses which would be incurred through
2 litigation of the dispute through trial would exceed any additional benefit that might be achieved.
3 Given that the Trustee's main goal is to benefit creditors, he believes the settlement at this point is
4 in the best interest of the creditors and the Estate and as such, this factor weights in favor of settling.
5 While the claims bar date has not yet run, the Trustee anticipates making a meaningful distribution
6 to creditors through the proceeds of the settlement and the liquidation of other assets.

7 In summary, the settlement is based on the Trustee's good business judgment employed to
8 benefit the Estate and creditors, and therefore approval of the Motion is proper.

9 **C. In the Alternative, There is a Good Business Reason for the Sale and the Sale is in the**
10 **Best Interest of the Estate**

11 The duties of a trustee in a Chapter 7 filing are enumerated in 11 U.S.C. § 704, which
12 provides in relevant part as follows:

13 (a) The trustee shall—

14 (1) collect and reduce to money the property of the estate for which
15 such trustee serves, and close such estate as expeditiously as is
compatible with the best interests of parties in interest;

16 (2) be accountable for all property received;

17 . . .

18 11 U.S.C. § 704.

19 Further, the Trustee, after notice and hearing, may sell property of the estate. 11 U.S.C. §
20 363(b). Courts will ordinarily approve a proposed sale if there is a good business reason for the sale
21 and the sale is in the best interests of the estate. *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830,
22 841 (Bankr. C.D. Cal. 1991); *In re Lionel Corp.*, 722 F.2d 1063, 1069 (2d Cir. 1983).

23 In this case, the sale is anticipated to net the Estate approximately \$15,000.00. Accordingly,
24 there is a good business reason for the sale and the sale is in the best interests of the Estate.

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1 Additionally, 11 U.S.C. § 363(f) of the Bankruptcy Code permits a trustee to sell assets free
2 and clear of all interests which may be asserted against such assets, with any such interests attaching
3 to the net proceeds of the sale, if subject to the rights and defenses of a debtor with respect thereto
4 any of the following: (1) Applicable nonbankruptcy law permits sale of such property free and clear
5 of such interest; (2) Such entity consents; (3) Such interest is a lien and the price at which such
6 property is to be sold is greater than the aggregate value of all liens on such property; (4) Such
7 interest is in bona fide dispute; or (5) Such entity could be compelled, in a legal or equitable
8 proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f). As section 363(f)
9 of the Bankruptcy Code is stated in the disjunctive, when proceeding pursuant to 11 U.S.C. § 363(b),
10 it is only necessary to meet one of the five conditions of section 363(f).

11 The Trustee does not know of any liens which attach to the Litigation. Out of an abundance
12 of caution, however, the Trustee seeks approval to sell the Litigation free and clear of liens pursuant
13 to Section 363(f).

14 Finally, the Trustee's proposed Bidding Procedures are appropriate and should be approved
15 by the Court in the event a Competing Bidder appears to bid on the purchase of the Estate's interest
16 in the Litigation.

17 **D. The Court has the Authority to Waive the Fourteen-Day Stay of Sale**

18 Federal Rule of Bankruptcy Procedure 6004(h) provides that "[a]n order authorizing the use,
19 sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry
20 of the order, unless the Court orders otherwise." Fed. Rule Bankr. P. 6004(h).

21 The Trustee desires to close the sale of the Litigation as soon as practicable after entry of an
22 order approving the sale. Accordingly, the Trustee requests that the Court, in the discretion provided
23 it under Federal Rule of Bankruptcy Procedure 6004(h), waive the fourteen (14) day stay
24 requirement.

25 **IV. CONCLUSION**

26 Based on the foregoing, the Trustee respectfully requests this Honorable Court enter an order
27 approving the Motion as follows:

- 28 1. Approving the Bidding Procedures set forth herein.

2. Unless a Competing Bidder is the winning bidder, approving the Agreement with the Defendants as attached to the Golden Declaration as Exhibit 1.

3. Authorizing the Trustee to sell the Litigation on an as-is, where-is basis, without any warranties or representations, to the Defendants (or successful bidder) pursuant to the terms and conditions as set forth in the Agreement.

4. Authorizing the Trustee to execute any necessary documents and take all necessary steps to carry out the provisions of the settlement, including the Agreement attached as Exhibit 1 to the Golden Declaration.

5. Waiving the fourteen day stay of the order approving the sale of the Property under Federal Rules of Bankruptcy Procedure 6004(h).

6. For such other and further relief the Court deems just and proper.

SHULMAN HODGES & BASTIAN LLP

DATED: December 10, 2021

By: /s/ Melissa Davis Lowe
Leonard M. Shulman
Melissa Davis Lowe
Attorneys for Jeffrey I. Golden, Chapter 7 Trustee

DECLARATION

DECLARATION OF JEFFREY I. GOLDEN

I, Jeffrey I. Golden, declare as follows:

1. I am the Chapter 7 trustee for the bankruptcy estate of Linda Nguyen. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief, and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I make this declaration in support of my Motion for an Order Approving Settlement and Compromise of Disputes By and Among Chapter 7 Trustee, Rockwell at Amelia Passage, LLC and Tri M. Vo, Or in the Alternative, for Sale of the Estate's Interest in Pending Litigation Free and Clear of Liens and Subject to Overbids ("Motion"). All capitalized terms not otherwise defined in the Motion shall have the meaning set forth herein.

3. In her Schedules A/B, the Debtor listed as an asset of the Estate a pending claim in the Circuit Court for the Fourth Judicial Circuit in and for Nassau County, Florida, Case No. 19CA000387AXYX (the "Litigation"). The Debtor listed the value of the Litigation as "Unknown."

4. In the Litigation, it appears that the Debtor alleges claims related to an 11-acre property, as well as claims related to a real estate development project managed and being developed by the Defendants in Nassau County, Florida (the "Project"). Specifically, the Debtor alleges that during one of her business exchanges with the Defendants, the Defendants had the Debtor sign an extension addendum, but instead of using the signature page for the extension addendum, the Defendants allegedly took the signature page and attached it to an amendment to a purchase and sale agreement, which assigned all of the Debtor's rights to purchase the property at issue to the Defendants.

5. At her meeting of creditors held on September 29, 2021, the Debtor testified that the adjoining parcel to the Property was not acquired by Defendants and as such, the Project is not part of the Litigation. Moreover, she testified that the 11-acre parcel is marsh land and is not all that valuable.

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1 6. Through the Motion, I request approval of the settlement I reached through my
2 counsel with Rockwell at Amelia Passage, LLC and Tri M. Vo. A true and correct copy of the
3 Settlement Agreement for which I request Court approval is attached here as Exhibit 1.

4 7. Before agreeing to enter into the settlement that is the subject of the Motion, I
5 consulted with counsel about the risks and benefits of entering into the settlement. I consulted with
6 counsel about the benefits of the Estate which would result from the proposed settlement. For the
7 reasons stated in the Motion and the accompanying Points and Authorities, and based on my years
8 of experience as a Trustee, as well as my consultation with counsel, I believe it is in the best interest
9 of the Estate to enter into the settlement.

10 8. In order to obtain the highest and best value for the Estate from the liquidation of the
11 Litigation, I am requesting, in the alternative, that the Court approve the sale of the Estate's interest
12 in the Litigation subject to overbids and free and clear of liens.

13 9. Because the settlement is subject to overbids, I believe I will be able to obtain the
14 highest and best price for the Estate from the liquidation of the Estate's interest in the Litigation.

15 I declare under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct.

17 Executed on December 6, 2021 at Costa Mesa, California.

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19 _____
20 Jeffrey I. Golden
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EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“**Agreement**”), is made by and between Jeffrey I. Golden, solely in his capacity as the Chapter 7 Trustee (“**Trustee**”) for the bankruptcy estate of debtor Linda V. Nguyen (“**Debtor**”), in Debtor’s bankruptcy case styled as *In re: Linda Nguyen*, Case No. 8:21-bk-10534-TA, in the United States Bankruptcy Court, Central District of California (the “**Bankruptcy Case**”), on the one hand, and Rockwell at Amelia Passage, LLC, a California limited liability company (“**Rockwell**”) and Tri M. Vo (“**Vo**”), an individual, on the other hand. When referenced herein together, all the parties to this Agreement shall be known as the “Parties.”

RECITALS

WHEREAS, Debtor filed a lawsuit on September 23, 2019, styled as *Linda V. Nguyen v. Rockwell at Amelia Passage, LLC, and Tri M. Vo*, Case No. 19CA000387AXYX, in the Circuit Court for the Fourth Judicial Circuit in and for Nassau County, Florida (the “**Litigation**”), in which Debtor alleges claims related to an 11-acre property (“**Property**”), as well as claims related to a real estate development project managed and being developed by Vo and Rockwell in Nassau County, Florida (the “**Project**”);

WHEREAS, Vo and Rockwell dispute Debtor’s claims in the Litigation, including all claims related to the 11-acre property and the Project;

WHEREAS, the Lawsuit remains pending, and has not been scheduled for trial;

WHEREAS, on March 2, 2021, (“**Petition Date**”), the Debtor filed a voluntary petition for bankruptcy protection under Chapter 7 of the Bankruptcy Code in the Bankruptcy Case and Jeffrey I. Golden was appointed as the Chapter 7 trustee;

WHEREAS, all of Debtor’s claims alleged, or which could have been alleged, in the Litigation are part of the Debtor’s bankruptcy estate (“**Debtor’s Estate**”) in the Bankruptcy Case;

WHEREAS, the Parties, through counsel, have engaged in an informal exchange of information and discussions of their respective legal positions, including potential defenses to the Debtor’s claims in the Litigation, as well as the valuation of such claims.

WHEREAS, to avoid the uncertainties, expense, and delay inherent in litigation of the disputes and claims in the Litigation, the Parties desire to provide for a resolution of all claims between them alleged in the Litigation, or which could have been alleged in the Litigation, and arising out of or relating to the Project, and on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sums of money to be paid hereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by the Parties, the Parties hereto intending to be legally bound do hereby agree as follows:

TERMS AND CONDITIONS OF SETTLEMENT

1. **Incorporation by Reference.** The above-stated Recitals are true and correct and are incorporated herein by this reference.
2. **Sale of the Litigation.** Trustee agrees to sell to Rockwell and Mr. Vo all of the Estate's right, title and interest in and to the Litigation and to settle the Litigation pursuant to the terms set forth herein, subject to overbids.
3. **Approval of Settlement by Bankruptcy Court.** Within seven (7) business days of the complete execution of this Agreement, Trustee shall cause to be filed in the Bankruptcy Case a Motion for Approval of Settlement seeking an order from the Bankruptcy Court approving this Agreement (the "**Approval Order**"). The Parties acknowledge that this Agreement is the result of extensive good faith negotiations between the Parties through their respective counsel, and is not to be construed as an admission of liability on the part of any of the Parties hereto, their agents, employees or officers, by whom liability is expressly denied. Rockwell and Vo are bound by this Agreement subject only to Bankruptcy Court approval and waive any right to object to approval by the Bankruptcy Court. The Parties will in good faith exercise all reasonable efforts required to obtain the entry of the Approval Order, including executing and delivering any motions, declarations or other items of support reasonably required in connection therewith.
4. **Settlement Payment.** Within fourteen (14) days after the Effective Date of this Agreement, Rockwell and Mr. Vo shall cause to be paid to the Trustee the amount of Fifteen Thousand Dollars (\$15,000.00) (the "**Settlement Payment**") by check made payable to "Jeffrey I. Golden, Chapter 7 Trustee," and mailed to the Trustee at Weiland Golden Goodrich, LLP, P.O. Box 2470 Costa Mesa, CA 92628-2470. The Trustee shall hold the Settlement Payment in trust until the Litigation is dismissed with prejudice in accordance with this Agreement, after which, the Settlement Payment may be released from trust by the Trustee.
5. **Dismissal of the Litigation With Prejudice.** Within fourteen (14) days after the Trustee's receipt of the Settlement Payment in trust, the Trustee, on behalf of the Debtor, shall execute a Joint Stipulation of Dismissal with Prejudice of the Litigation, which the Trustee agrees Rockwell and Vo will cause to be executed on their behalf and thereafter filed with the Court in the Litigation in order to obtain dismissal of the Litigation with prejudice, and with the Parties to bear their own attorney's fees and costs. The Parties will in good faith exercise all reasonable efforts required to obtain the dismissal of the Litigation with prejudice, including executing and delivering any motions, declarations or other items of support reasonably required in connection therewith.
6. **No Claims.** Rockwell and Vo agree to waive any and all claims they may have in the Bankruptcy Case such that they will not receive any distribution in the Bankruptcy Case.
7. **Conditions Precedent to Settlement.** This Agreement is expressly contingent upon the Bankruptcy Court's approval of the Agreement and Rockwell and Mr. Vo being the winning bidder

for the Litigation in the event there are overbidders who wish to purchase the Estate's interest in the Litigation.

8. Releases.

a. Except for the obligations created by this Agreement and only upon receipt of the Settlement Payment in full, the Trustee, solely in his capacity as the Trustee for the Debtor's Estate, on behalf of the Debtor's Estate and its administrators, insurance companies, predecessors, successors, assigns, agents, contractors, professionals, realtors, servants, employees, members, corporations, officers, directors, partnerships, partners, members, associates, attorneys, representatives, principals, joint ventures, parents, subsidiaries, shareholders, heirs, spouses, family members, executors and assigns, past and present, if any, or anyone else claiming by and through the Debtor's Estate, including, without limitation, the Debtor, (collectively "Debtor's Estate Releasors"), hereby releases and forever discharges Vo and Rockwell, together with each of their respective subsidiaries, affiliates, current and former officers, directors, managers, members, brokers, professionals, consultants, contractors, brokers, insurers, employees, agents and attorneys, (collectively "Rockwell/Vo Releasees"), of and from any and all known claims, demands, damages, debts, liabilities, accounts, obligations, costs, expenses, actions and causes of action of any kind whatsoever existing as of the Effective Date of this Agreement, whether known or unknown, concealed or hidden, matured or unmatured, liquidated or unliquidated, fixed, contingent, direct or indirect, and which arise out of or relate in any way to the Property, the Project, the Litigation or any claims alleged, or which could have been alleged, in the Litigation.

b. Except for the obligations created by this Agreement, Vo and Rockwell, on behalf of themselves, their spouses, heirs, offspring, executors, affiliates, administrators, insurance companies, predecessors, successors, assigns, agents, servants, employees, members, corporations, officers, directors, partnerships, partners, associates, attorneys, representatives, principals, joint ventures, parents, subsidiaries, affiliated companies and shareholders, past and present, or anyone else claiming by and through any of them (collectively "Rockwell/Vo Releasors"), do hereby acknowledge full and complete satisfaction of and do hereby fully and forever release and discharge the Trustee, both individually and in his capacity as the Chapter 7 Trustee of the Debtor's Estate, as well as his heirs, spouses, offspring, executors, administrators, predecessors, successors, assigns, agents, servants, employees, members, corporations, officers, directors, partnerships, partners, associates, attorneys, representatives, principals, joint ventures, parents, subsidiaries, shareholders, past and present, and each of them, from any and all claims, demands and causes of action of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, whether concealed or hidden, which arise out of or relate to the Bankruptcy Case or the Litigation.

9. Conditions Precedent. This Agreement is contingent upon the entry of the Approval Order by the Bankruptcy Court approving this Settlement Agreement and Release in its entirety. The date on which the Approval Order becomes a Final and Non-Appealable Order shall be the "**Effective Date**." On the Effective Date, this Agreement shall become binding on the Parties.

Under this Agreement, a “Final and Non-Appealable Order” shall mean that the Bankruptcy Court order has not been vacated, reversed, stayed, modified or amended, and as to which (i) the time to appeal, petition for certiorari or move for reargument, rehearing or a new trial has expired and no appeal, petition for certiorari or motion for reargument, rehearing or a new trial, respectively, has been filed (which time period shall mean, with respect to motions to correct such Bankruptcy Court Order under Rule 9024 of the Federal Rules of Bankruptcy Procedure, Rule 60 of the Federal Rules of Civil Procedure or otherwise, 14 days after the entry of such Bankruptcy Court Order, or (ii) any appeal, any petition for certiorari or any motion for reargument, rehearing or a new trial that has been or may be filed has been resolved by the highest court (or any other tribunal having appellate jurisdiction over the Order) to which the Bankruptcy Court Order was appealed or from which certiorari or reargument, rehearing or a new trial was sought, and the time to take any further appeal, petition for certiorari or move for reargument, rehearing or a new trial shall have expired without such actions having been taken.

10. No Assignment. The Parties represent that they have not assigned, sold, alienated, transferred or hypothecated any portion of any claims, demands, causes of action, damages, suits, losses or rights to sue released by this Agreement.

11. Authority and Binding on Successors. The Parties warrant that they have entered into this Agreement knowingly and voluntarily, and that they have had adequate time to review the contents of this Agreement and consult their attorney(s) concerning the terms and conditions of this Agreement. The Parties represent and warrant that they have full authority to enter into and execute this Agreement. All the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective spouses, heirs, legal representatives, successors, and assigns.

12. No Admission of Liability. The Parties acknowledge and agree that this Agreement and its performance are not in any respect, nor for any purpose, an admission or conclusion of any liability or wrongdoing whatsoever on the part of any Party hereto or any of such Party’s successors, predecessors, assigns, agents, advisors, employees, legal representatives, or any persons acting by, through or under them.

13. Preparation of Agreement. This Agreement shall not be construed more strongly against any party, regardless of who is responsible for its preparation. The Parties acknowledge that all parties contributed to and are equally responsible for its preparation.

14. Entire Agreement. This Agreement constitutes and contains the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, agreements or understandings between the parties concerning any of the matters addressed in, or the provisions of, this Agreement. This Agreement may only be amended or modified by a writing signed by each of the Parties to this Agreement.

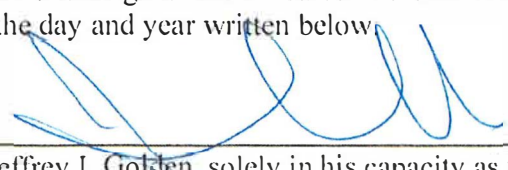
15. Signature in Counterparts. This Agreement may be signed in one or more counterparts, which may be by electronic signature, or transmitted via facsimile or .pdf, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same Agreement.

16. Trustee Capacity. The Trustee is signing this Agreement in his capacity solely as Chapter 7 Trustee for the Estate. Nothing contained herein shall in any way impute liability to the Trustee, personally or as a member of any professional organization, or anyone acting on his behalf, including but not limited to her counsel, Shulman Bastian Friedman & Bui LLP.

[Signature pages follow]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Settlement Agreement and Mutual Release, as of the day and year written below.

Dated: December __, 2021



Jeffrey I. Golden, solely in his capacity as the
Chapter 7 trustee for the bankruptcy estate of *In*
re: Linda Nguyen, Case No. 8:21-bk-10534-TA,
in the United States Bankruptcy Court, Central
District of California

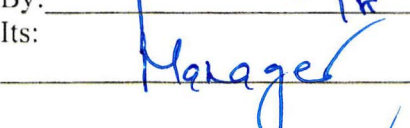
**ROCKWELL AT AMELIA PASSAGE, LLC, A
CALIFORNIA LIMITED LIABILITY COMPANY**

Dated: December __, 2021

By:
Its:



Tri M. Vo



Manager

Dated: December 7, 2021



Tri M. Vo